IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.466 OF 2002

Mrs.Manjula Vyas ...Petitioner

Versus

M/s.Elpro International Ltd. ...Respondent

.....

Mr.Rajesh Maravoor i/b Maravoor & Wamorkar for Petitioner.

Mr.Hemant Sethi for Respondent.

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CORAM: A.M.KHANWILKAR, J.

DECEMBER 12, 2007.

P.C.

1. Heard Counsel for the parties. Perused the pleadings and documents on record.

2. The Petitioner's claim is founded on goods sold, delivered and supplied to the Respondent Company from March 1997 to September 1997 from time to time as per the instructions of the Respondent Company. According to the Petitioner, the aggregate value of goods supplied was

Rs.71,18,000/- (Rupees Seventy-one Lakhs Eighteen Thousand). Out of that, only sum of Rs.63,16,000/- (Rupees Sixty-three Lakhs Sixteen Thousand) has been paid by the Respondent. In other words, according to the Petitioner, the outstanding debt payable by the Respondent Company is in the sum of Rs.8,02,000/- (Rupees Eight Lakhs Two Thousand). The Petitioner is strongly relying on the letter sent by the Respondent dated 8th May 2001, which according to the Petitioner is in the nature of admission of the liability to pay the outstanding amount.

3. Having considered the rival submissions and adverting to the documents brought to my notice by the Counsel for the Respondent, I am more than convinced that triable issues would arise for consideration. The Respondent has raised dispute much before institution of the present Petition. In fact, there is contemporaneous record to indicate that the Respondent has raised issue regarding delayed supply and non-issuance of E-1 Form which has resulted in serious prejudice to the Respondent. Besides, there is material to indicate

that dispute regarding quality of goods supplied was also raised by the Andhra Pradesh State Electricity Board which was to directly receive the goods from the Petitioner.

4. Significantly, the Petitioner has filed Suit against the Respondent for recovery of the self-same amount. In the said Suit, it is clearly asserted by the Petitioner that the parties were maintaining running account. As per the said running account, the last payment received by the Petitioner was on 5th September 1998. If it is so, the limitation to file present Petition commenced from that date, whereas, the present Petition is filed on 8th November 2001 which is beyond limitation.

5. Insofar as letter at Page 83 sent by the Respondent to the Petitioner dated 8th May 2001 is concerned, on reading the said letter as a whole, it is not possible to accept the stand of the Petitioner that the Respondent admitted the outstanding debt. Whereas, it is more than clear

that the Respondent raised several triable issues in the said letter and asserted that the Petitioner was in fact liable to pay sum of Rs.5,00,000/- (Rupees Five Lakhs) as per the Books of Accounts as the debit balance against the name of the Petitioner was shown as Rs.12,00,000/- (Rupees Twelve Lakhs) as against credit balance of only Rs.7,00,000/- (Rupees Seven Lakhs).

6. Taking overall view of the matter, this is not a matter of admission. Hence, rejected.

A.M.KHANWILKAR, J.